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1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3
4 MOOG INC.,) 22-CV-187
Plaintiff)
5 vs. Buffalo, New York
6 SKYRYSE, INC., et al) June 1, 2022
Defendant.
7 - - - - - X
8 **STATUS CONFERENCE**
9 **Proceeding held via Zoom for Government Platform as well**
as AT&T Teleconference
All parties appeared remotely.

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
12 UNITED STATES MAGISTRATE JUDGE

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22 FOR DEFENDANT
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P R O C E E D I N G

20:30:24 MAGISTRATE JUDGE MCCARTHY: Why don't we go
20:30:26 5 through, everyone identify themselves and who they are
20:30:29 6 representing.

20:30:30 7 MS. ANDOH: Rena Andoh, Shepphard Mullin,
20:30:34 8 for Plaintiff. With me today from my firm Lai Yip and
20:30:39 9 Kazim Naqui, and from the Hodgson Russ firm we have and
20:30:52 10 Pauline Muto and Robert Fluskey.

20:30:52 11 MAGISTRATE JUDGE McCARTHY: Okay.

20:30:57 12 MR. GROSS: Your Honor, this is Dave Gross
20:31:01 13 speaking from Latham and Watkins on behalf of Defendant
20:31:14 14 Skyryse, my partner Doug Lumish is here with me, also
20:31:25 15 our colleague Kelley Storey, and our local counsel,
20:31:35 16 Terry Flynn.

20:31:39 17 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
20:31:40 18 you. And, Gabe, you are just audio, correct?

20:31:44 19 MR. GROSS: I am today, your Honor, and
20:31:46 20 thank you for the Court's indulgence. I appreciate it.

20:31:48 21 MAGISTRATE JUDGE MCCARTHY: Sure. No
20:31:49 22 problem. And I thank you all for convening on such
20:31:53 23 short notice. I had originally thought that just on
20:31:58 24 review of the papers I would be good to go, but the best
20:32:02 25 laid plans. So I wanted to hear a little more from

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20:32:07 2 everybody.

20:32:09 3 MR. TRUITT: If I may give my appearance as
20:32:13 4 well, your Honor. Alex --

20:32:17 5 MAGISTRATE JUDGE MCCARTHY: I'm sorry.

20:32:24 6 MR. TRUITT: Alexander Truitt on behalf of
20:32:27 7 the individual Defendants, Mr. --

20:32:32 8 MAGISTRATE JUDGE MCCARTHY: Yes, I
20:32:32 9 apologize, Mr. Truitt.

20:32:34 10 MR. TRUITT: And I also appreciate the
20:32:36 11 courtesy of allowing me to appear via audio. I am from
20:32:46 12 Winget, Spadafora and Schwartzberg.

20:32:46 13 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
20:32:46 14 you.

20:32:47 15 Eric, you want to go ahead and call the
20:32:50 16 case?

20:32:51 17 THE CLERK: Yes, Judge. We're on the record
20:32:53 18 in civil proceeding 22CV187, Moog, Inc. V Skyryse, Inc.
20:33:04 19 All appearances have been stated. The Honorable
20:33:09 20 Jeremiah J. McCarthy presiding.

20:33:10 21 MAGISTRATE JUDGE MCCARTHY: Thank you again.
20:33:10 22 And the purpose of today's proceeding is to hear more
20:33:13 23 from the parties in regard to Moog's motion to set
20:33:20 24 revised scheduling orders, which is docket No. 118. I
20:33:25 25 have been through the papers, I'll be through them

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20:33:28 2 again, but I would like to briefly hear from -- maybe
20:33:33 3 not so briefly -- hear from you, but before I do that, I
20:33:38 4 have a couple of general questions and comments. First
20:33:45 5 of all, I know one of the areas of dispute is whether
20:33:50 6 the deadline should be hard deadlines or substantial
20:33:54 7 production deadlines. And, as I indicated in my e-mail
20:33:59 8 of the other day, and with due respect to Moog, I
20:34:05 9 recognize the fact that some deadlines in the past have
20:34:09 10 been unequivocal, but your proposal that we have hard
20:34:16 11 deadlines with a right to apply to modify scheduling
20:34:20 12 orders on a showing of good cause, that can lead to a
20:34:27 13 lot of confusion and delay as well as to what
20:34:29 14 constitutes good cause. And I grant you that my
20:34:34 15 definition of "substantial production" is not perfect,
20:34:38 16 either, but I think it places the burden on the -- it
20:34:45 17 makes clear, first of all, that any farrier in
20:34:51 18 production should not delay the schedule and briefing
20:34:55 19 and discovery schedule necessary for the preliminary
20:34:58 20 injunction hearing, which now is going to take place, I
20:35:00 21 guess, tentatively, October 17th, with Judge Vilardo.
20:35:07 22 And it places the burden of explanation or excuse on the
20:35:15 23 party who has desires to make additional productions
20:35:19 24 beyond the substantial production deadline, so I'm up in
20:35:24 25 the air on a lot of things. But I think in terms of how

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20:35:28 2 that is going to be defined, I think that is the best
20:35:31 3 way to go. Now, one of the things that Moog says in
20:35:38 4 opposing -- excuse me, that Skyryse says in opposing
20:35:44 5 Moog's motion is that, at some point, if Skyryse were to
20:35:50 6 identify its trade secrets, everything would go a lot
20:35:55 7 more smoothly. And I've said in my e-mail that it's
20:36:00 8 unrealistic to expect Moog to identify all of its trade
20:36:05 9 secrets when it doesn't know the full scope of what has
20:36:10 10 been taken. But, Mr. Hunter's declaration submitted in
20:36:14 11 support of the motion for a preliminary injunction seems
20:36:19 12 to identify with a fair level of specificity what the
20:36:22 13 problem areas are. And, I mean, what is the problem
20:36:29 14 with requiring Moog to identify its trade secrets,
20:36:35 15 obviously, in a manner that doesn't destroy the secrecy
20:36:42 16 value, Ms. Ando, I guess I'll hear from you on that.

20:36:45 17 MS. ANDOH: Your Honor, I think your point
20:36:47 18 with regard to the Hunter declaration is well taken.
20:36:50 19 We've done what we can at this juncture to try and
20:36:54 20 provide notice to the Defendants as to what it is we
20:36:57 21 believe our trade secret materials, and we've done it to
20:37:00 22 the best of our ability. So, you know, this is an
20:37:02 23 ongoing process. But I want to be a little careful
20:37:06 24 about the insinuation that we're somehow into expedited
20:37:10 25 discovery. No party has turned over documents yet in

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20:37:49 2 response to document demands. We still don't have
20:37:59 3 access to the images at IDS. So, functionally, we're
20:38:05 4 still at the pleading phase in terms of our ability to
20:38:09 5 have access to Skyryse's information. And, as your
20:38:12 6 Honor knows from the complaint and from the preliminary
20:38:15 7 injunction motion, we're in a little bit of a unique
20:38:18 8 situation in that both of the individual Defendants that
20:38:22 9 we've accused of stealing our information, took very
20:38:29 10 active steps to cover their tracks after they took our
20:38:33 11 information, which, again that is logical, right, you
20:38:38 12 don't want to get caught. But what it has left us with
20:38:44 13 is that we have a situation where we have highly
20:38:47 14 incomplete information. You know, not to go sort of too
20:38:55 15 far into the weeds, but some of this actually sort of
20:39:04 16 interlays over some of the arguments that Skyryse is
20:39:17 17 trying to make with respect to, for example, the search
20:39:23 18 terms issue. So, we have two sets of downloads that we
20:39:27 19 know have happened. And, but, in both cases, we know
20:39:31 20 they've happened, not because we've been able to recover
20:39:34 21 copies of what was taken, we know what is taken because
20:39:37 22 there are forensic relics that identify which, at least,
20:39:44 23 some level of understanding what they took. And in each
20:39:52 24 individual Defendant's case, what we know is slightly
20:39:55 25 different. So with respect to Defendant Kim, what we

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20:40:00 2 know is we know the file names of the files that she
20:40:03 3 took. We don't have a copy of the files. She wiped the
20:40:07 4 hard drive that we believe she used to take those files,
20:40:13 5 and so when it was returned to us, it was, like, factory
20:40:18 6 wiped, nothing on there. And while it might seem as
20:40:21 7 though it's a simple matter for us to go back and pull
20:40:26 8 all of the files again because we have all of the file
20:40:29 9 names, it's not actually that simple. There are a few
20:40:32 10 reasons why. One reason why is because there was a time
20:40:36 11 lag that was pretty substantial between the time that
20:40:40 12 the theft happened and the time we found it. And a lot
20:40:43 13 of the files she took are living files. They are not
20:40:46 14 sort of a static document that nobody touches. So, over
20:40:50 15 time, there are substantial changes that are made to
20:40:52 16 these documents as part of Moog's day-to-day business
20:40:56 17 because these files are part of Moog's active business.
20:40:59 18 So, in order for us to be able to identify specifically
20:41:02 19 what she took, we really need to get access to the files
20:41:09 20 that she took. It's really an approximation on our
20:41:16 21 part. Also, files get moved into different locations
20:41:19 22 over time. They get renamed. There are all different
20:41:22 23 kinds of reasons why the file list we provided, even
20:41:25 24 though it's the best information we had and we did
20:41:30 25 everything we could to put Skyryse on notice, is not

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20:41:35 2 perfect. As a matter of fact, when Skyryse asked us to
20:41:45 3 provide MD5 hash values, your Honor will remember with
20:41:54 4 probably painful recollection with the amount of paper
20:42:04 5 that we provided in order to describe MD5 hash value.
20:42:14 6 But, the reason why we were only able to generate those
20:42:20 7 hash values for only about half of the documents and we
20:42:26 8 weren't able to verify the identity of the MD5 hashes is
20:42:31 9 because these documents change over time, and when the
20:42:36 10 documents change, the MD5 hashes change. And in a lot
20:42:42 11 of instances, we weren't able to identify conclusively
20:42:48 12 the specific document because we don't have that
20:42:50 13 document in the file system that Ms. Kim took it in.

20:42:54 14 With respect to Mr. Pilkington, we have an
20:42:57 15 even slightly more complicated situation. For example,
20:43:05 16 he took almost 1.2 million files. And we said Kim took
20:43:12 17 about 136,000 or 137,000 that we're aware of. The 1.2
20:43:25 18 million files, we don't even have the file names. We
20:43:28 19 have the names of the folders, that is the information
20:43:31 20 that we have. So while we are diligently trying to
20:43:34 21 reconstruct, to the best of our ability, what might have
20:43:38 22 been contained in those files, we are now trying to
20:43:42 23 reconstruct a file system that he took as a snapshot
20:43:49 24 back in November, and I think even in October, and we're
20:43:53 25 now trying to reconstruct that months later when we're

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20:43:57 2 in an active business and these files are being used,
20:44:06 3 modified, moved, regularly. And so, you know, with all
20:44:14 4 of that having been said, we believe that we've done
20:44:25 5 absolutely everything we can to identify at this phase,
20:44:34 6 not having access to the files, not having access to
20:44:37 7 their computers, not having access to any documents that
20:44:40 8 we've requested that they turn over to us to identify
20:44:43 9 the categories of trade secrets that we know and believe
20:44:55 10 exist in there, and to provide as much information as we
20:45:23 11 can about what we know that those downloads have
20:45:26 12 contained.

20:45:27 13 And I will note one thing that did not go
20:45:30 14 mentioned in Skyryse's brief, that also goes to this
20:45:33 15 point is, and it's a little bit tangential, because I
20:45:37 16 want to be careful about making sure that we're not
20:45:42 17 conflating Skyryse's obligation to comply with the March
20:45:45 18 11 turnover order with their discovery obligations.
20:45:50 19 But, we actually, at their request, after we provided
20:45:55 20 them the incomplete MD5 hashes, we met and conferred.
20:45:59 21 This is actually prior counsel, Gibson Dunn, we met and
20:46:03 22 conferred with them and wanted to try and help shortcut
20:46:07 23 at least some of these issues around being able to
20:46:10 24 identify things that we thought would be uniquely Moog,
20:46:18 25 so we actually provided a list of 32 search terms, and I

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20:46:24 2 believe referenced it actually in our forensic protocol
20:46:30 3 briefing to your Honor. We provided a list of 32 search
20:46:33 4 terms that are targeted and really designed to identify
20:46:36 5 markers that are pretty unique to Moog proprietary
20:46:41 6 information, and so where we can, we have tried to be
20:46:45 7 helpful in trying to narrow the issues here and trying
20:46:49 8 to give them something that they can work with to try
20:46:51 9 and have a slightly less large universe of materials to
20:46:56 10 look at. But, I think, you know, for them to say that
20:47:00 11 we have to identify with more specificity than we
20:47:06 12 currently have without having access to discovery with
20:47:08 13 them, all of our trade secrets that we believe are at
20:47:11 14 issue in this case, when the people on their side of the
20:47:14 15 case who took this stuff, made active efforts to cover
20:47:21 16 it up, and obscure it so that we couldn't do that,
20:47:31 17 doesn't really make sense.

20:47:33 18 And I'll just say in closing, and I don't
20:47:35 19 want to overstate or overemphasize this point, but I
20:47:39 20 think it's worth mentioning again, we're at the pleading
20:47:45 21 phase. They did not move to dismiss our complaint on
20:47:47 22 the basis that we failed to put them on sufficient
20:47:53 23 notice with respect to our trade secrets. So, as far as
20:47:56 24 we're concerned, we've done everything we can at the
20:47:59 25 complaint phase, which is operationally where we're at

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20:48:03 2 right now, to give them information. We've kept them
20:48:08 3 apprised of our continuing investigation. We've given
20:48:12 4 them additional information as we've had it. We've
20:48:16 5 tried to be cooperative in providing them with
20:48:18 6 additional information. But telling us that we now need
20:48:21 7 to effectively provide them with a close of discovery
20:48:26 8 level description at the opening of discovery, we
20:48:33 9 believe, is not proper and should not be a threshold
20:48:36 10 issue.

20:48:37 11 MAGISTRATE JUDGE MCCARTHY: Okay. Before I
20:48:52 12 hear from counsel for Skyryse -- wait a second, okay.
20:48:59 13 Gabe Gross, he disappeared, now he is back. I allow
20:49:04 14 myself in every conference that I have, I allow myself
20:49:07 15 one stupid question, okay? So here it comes. You may,
20:49:13 16 you may object to any further questions on the basis of
20:49:19 17 stupidity, but let me just ask you this. The March 11th
20:49:22 18 -- and I want -- this is directed to everybody. The
20:49:26 19 March 11th stipulation gives in, I guess, 40,000 foot
20:49:34 20 language, general prohibitions about what the Defendants
20:49:37 21 cannot do. They cannot use any non-private or
20:49:43 22 non-public information of Moog's, et cetera, et cetera.
20:49:48 23 How do you envision, assuming that you are successful on
20:49:53 24 a -- on the preliminary injunction motion, what
20:49:57 25 additional type of relief are you going to get? Are you

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20:50:00 2 going to get more specificity and definition of what it
20:50:03 3 is they cannot do? And I recognize, in fact, I was
20:50:06 4 talking with my law clerks earlier, it's been a while
20:50:10 5 since I have been involved in trade secret litigation,
20:50:15 6 but I suppose one of the problems you all face is how do
20:50:22 7 you describe your trade secret at some point in the
20:50:25 8 litigation with sufficient aspecificity that the
20:50:27 9 Defendant can properly prepare a defense and yet not --
20:50:35 10 not destroy its secrecy. But, back to my initial
20:50:39 11 question. You've already got very general protections
20:50:41 12 in the March 11th order or stipulation which, which was
20:50:48 13 then adopted, approved by Judge Vilardo. What do you
20:50:55 14 expect that you're going to get additionally, assuming
20:50:57 15 that the Defendants would be willing, and I think they
20:50:59 16 would, to continue abiding by that? What type of
20:51:04 17 additional relief are you going to get? Is it going to
20:51:07 18 be a greater definition of what it is they cannot do?

20:51:12 19 MS. ANDOH: So, your Honor, that is not a
20:51:14 20 dumb question at all.

20:51:15 21 MAGISTRATE JUDGE McCARTHY: Okay. That
20:51:16 22 means I get --

20:51:18 23 MS. ANDOH: You get it back.

20:51:19 24 MAGISTRATE JUDGE McCARTHY: I can carry it.

20:51:21 25 MS. ANDOH: I will say this, I think it might

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20:51:23 2 be a little premature. But I will tell you that there
20:51:26 3 -- and your Honor, I'm going to go through a little bit
20:51:31 4 extreme of consciousness, forgive me if I go a little
20:51:34 5 bit out there. It seems to me there are still two sets
20:51:38 6 of issues that we're dealing with. And I think we still
20:51:41 7 need to get some additional clarity around before I can
20:51:45 8 really answer the question.

20:51:46 9 The first thing, we've raised this before,
20:51:48 10 and without causing a conflagration among my cocounsel
20:52:08 11 here, we have real concerns about the level of
20:52:11 12 compliance with the March 11th order as it stands now.
20:52:14 13 So, one of the things we really need to, and by we, I
20:52:18 14 mean Moog, is the March 11 order really effective and do
20:52:22 15 we need to reword it or do we need to have additional
20:52:25 16 restrictions or do we need to have tighter restrictions
20:52:28 17 in order to make sure that we're actually getting the
20:52:31 18 comfort that was intended when we entered the March 11
20:52:34 19 order in the first place? I know this is actually
20:52:38 20 related to the memorandum of law that we submitted to
20:52:41 21 your Honor. You know, we were told back on April
20:52:46 22 25th --

20:52:48 23 MAGISTRATE JUDGE McCARTHY: -- 26th, no,
20:52:49 24 you're right, it was the 25th our conference was on the
20:52:53 25 26th.

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20:52:54 2 MS. ANDOH: That's right. And I think my
20:52:55 3 original discussion with them was over the weekend prior
20:52:58 4 to that. So two months ago, or, I guess, a month and a
20:53:01 5 half ago now, we found out that they found what they
20:53:05 6 believed to be non-public Moog information that was on
20:53:09 7 their systems. And ever since then, we've been asking
20:53:17 8 them for additional information, and they have made
20:53:23 9 turnovers of some documents to IDS. They did one
20:53:33 10 turnover, I'm looking at my notes right now, on April 29
20:53:37 11 of 568 files, and then two files on May 5th, but nothing
20:53:43 12 since then. And part of what Josh Krevitt, again,
20:53:47 13 former counsel, discussed with you at this hearing on
20:53:52 14 April 26th, they imaged 36 devices, and these devices
20:53:59 15 were imaged for a combination of two different sets of
20:54:03 16 issues that they had concerns around. One of which was
20:54:12 17 the non-public information, and the other was this
20:54:18 18 spoliation issue. We -- none of those images have been
20:54:22 19 turned over to the IDS. We still don't have any
20:54:25 20 information from -- from Skyryse or any further
20:54:30 21 information from Skyryse about what is on there, what
20:54:33 22 these search term hits were, and it's left us with a
20:54:38 23 very deep concern that there is still our non-public
20:54:43 24 information sitting out there that is not in compliance
20:54:46 25 with the March 11 order. And your Honor will recall

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20:54:49 2 that their compliance deadline with the March 11 order
20:54:55 3 was April 1st, and we're now sitting in June. So, you
20:55:03 4 know, I say this, not because I want to raise
20:55:06 5 necessarily this whole kettle of fish today, but I say
20:55:09 6 this to say that we don't think that the March 11 order
20:55:12 7 has been particularly effective, and we probably, if we
20:55:17 8 can't reach resolution with Skyryse, you know, we will
20:55:20 9 be coming to your Honor with an order to compel
20:55:25 10 compliance with the March 11 order, whatever
20:55:29 11 configuration it is.

20:55:30 12 I think it's also going to force us to think
20:55:32 13 about what the relief is that we actually need on this
20:55:36 14 preliminary injunction so we don't continue to have this
20:55:39 15 drip, drip, drip, and we really are able to articulate
20:55:43 16 and identify what it is that we believe, you know, that
20:55:46 17 they've taken that is actually being used. We know that
20:55:51 18 if the use is limited to a specific program, maybe we'll
20:55:54 19 just ask for a restriction on that program. But we
20:55:59 20 don't know that at this point because we haven't gotten
20:56:03 21 access and they still haven't turned over all of the
20:56:06 22 evidence of use. And this is sort of a long-winded way
20:56:08 23 of saying, I believe that we will need to and want to
20:56:14 24 seek a more tailored injunction by the time we get to
20:56:19 25 October 17. I don't know that it will necessarily just

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20:56:23 2 be more focused, it may also be slightly different,
20:56:28 3 depending on what we find. You know, some of the things
20:56:31 4 that -- some of the information that we've heard, it
20:56:35 5 indicates that it's possible that there may be some
20:56:37 6 additional issues here that are outside of the scope of
20:56:40 7 what we initially pled in our complaint with respect to
20:56:46 8 these two sets of downloads. Again, we just don't know
20:56:50 9 yet, and so it's very hard for me to say for certain
20:56:57 10 what it is that we're going to be seeking come October
20:57:00 11 17. But, what I can represent to the Court is that
20:57:03 12 we're going to be very thoughtful about it, and we're
20:57:05 13 not going to try and maintain the broadest possible
20:57:09 14 relief. We're going to maintain the most effective type
20:57:14 15 of relief to protect Moog's information.

20:57:17 16 MAGISTRATE JUDGE McCARTHY: Okay. Am I
20:57:17 17 going to hear from Mr. Gross or Mr. Lumish or maybe even
20:57:22 18 Mr. Flynn?

20:57:24 19 MR. GROSS: Your Honor, it may be a
20:57:26 20 combination, this is Gabe Gross speaking from Latham,
20:57:29 21 and I apologize, I lost my connection inexplicably
20:57:43 22 during Ms. Ando's argument, but I am back and it seems
20:57:53 23 to be working now.

20:57:54 24 MAGISTRATE JUDGE McCARTHY: Okay. Let me
20:57:57 25 ask you this, basically, it seems to me that your

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20:58:00 2 primary argument for not meeting the various production
20:58:06 3 deadlines and asking for a few more weeks to do so is
20:58:11 4 your need to complete your privilege review. And I
20:58:15 5 recognize that there are thousands or tens of thousands
20:58:19 6 of documents. I understand that. But, on the other
20:58:26 7 hand, at the early stage of this case, some promises
20:58:29 8 were made, and it was by prior counsel, and, but, as I
20:58:34 9 said, I think at the time of the transition, the Court
20:58:42 10 was not going to stand in the way of a change of counsel
20:58:46 11 provided that it doesn't delay the progress of the
20:58:51 12 litigation. So, if I understand correctly, you want
20:58:56 13 until June 24th to complete your privilege review and
20:59:01 14 you say that is aspirational, but more realistic than
20:59:05 15 June 2nd, or whatever Moog is talking about. So I guess
20:59:10 16 I'm just kind of trying to -- I'm wrestling with the
20:59:14 17 fact that there were some deadlines and some promises
20:59:18 18 and now it seems we're asking for more time, and,
20:59:21 19 believe me, I understand this cannot be an easy task to
20:59:25 20 go through all of this. But having said that, I'll you
20:59:28 21 have the floor now.

20:59:30 22 MR. GROSS: Thank you, your Honor. And I'll
20:59:31 23 try and answer that question first and also address the
20:59:34 24 three that I did hear you pose to Ms. Andoh and come
20:59:40 25 back to those.

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20:59:41 2 You just put your finger on one of the
20:59:44 3 issues is the review for potentially privileged
20:59:47 4 information on some devices that are in the neutral
20:59:50 5 forensic vendor's possession that has to be completed,
20:59:55 6 that will, that hundreds of hours that we're committed
20:59:58 7 to doing and have been working on, and all of the
21:00:00 8 parties and their counsel on this call have been
21:00:04 9 communicating with the vendor to make sure that is in
21:00:08 10 place properly with the appropriate contractual
21:00:13 11 protections and we're moving forward on that. This
21:00:19 12 issue is emblematic of that, and if you let me explain
21:00:35 13 more on that for a moment, please, it's here is what I'm
21:00:42 14 trying to convey. The issue about, I think it's five
21:00:47 15 devices from Defendant Skyryse, some others from the
21:00:51 16 individual Defendants, but five devices that we're
21:00:53 17 talking about that need to have the privilege review
21:00:56 18 completed, which we're working on. The issue is that in
21:00:59 19 the absence of a way to whittle, search or sift through
21:01:58 20 the contents of those devices, it was a large volume.
21:02:02 21 For those five, it happened to be about half a million
21:02:06 22 documents, which is why the task is significant in
21:02:08 23 magnitude and is taking time. And we wanted to be up
21:02:12 24 front with our colleagues at Shepphard Mullin and the
21:02:16 25 Court about the number of hours it will take to get

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21:02:18 2 through that. We are absolutely working on that. The
21:02:22 3 reason I say it's emblematic of the issues that I think
21:02:25 4 are posing all parties some difficulty here is that in
21:02:29 5 the absence of a way to focus in on what's relevant
21:02:32 6 through -- be it through search terms, be it through a
21:02:36 7 specific identification of the trade secrets, what
21:02:39 8 Defendant Skyryse is left to do and is doing right now
21:02:42 9 is looking at the entire universe and then trying to
21:02:45 10 make sure we get to the Plaintiff and their counsel the
21:02:49 11 expedited discovery that is actually going to speak to
21:02:53 12 the claims in this case and to the defenses. So I hope
21:02:56 13 that addresses your first question about the five
21:02:58 14 devices that require privilege review. And that June
21:03:01 15 24th date is one I think we can meet and we're
21:03:05 16 absolutely committed to doing so if we have the Court's
21:03:17 17 permission to do so.

21:03:20 18 But I would like to address this, this
21:03:23 19 larger, this larger issue, because I did hear Ms. Andoh
21:03:28 20 explain that, from Moog's perspective, they've done
21:03:31 21 everything they can to try and provide some guidance,
21:03:34 22 some clarity about what the trade, the trade secrets are
21:03:38 23 that would help Skyryse sort through what really is now
21:03:43 24 an overwhelming amount of information. We've mentioned
21:03:46 25 in our papers, and I imagine it stuck out to your Honor,

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21:03:49 2 that it's millions of files, it's terabytes of data,

21:03:53 3 it's really a tremendous amount of information that

21:03:56 4 we've preserved in order to make sure we can go through

21:03:59 5 discovery in an orderly way. And so there have been

21:04:03 6 discussions, both between our predecessor counsel and us

21:04:06 7 and Ms. Andoh and her team at the Plaintiff's counsel

21:04:10 8 about how to do this. And respectfully, we just

21:04:13 9 disagree that Moog has done everything it could. We

21:04:16 10 understand the points that they've made that some files

21:04:19 11 have changed, that some files are not static and that

21:04:23 12 they may not know, at this point, with one 100 percent

21:04:26 13 precision every file that has been taken. But we do

21:04:30 14 know that they know by name and by file path where the

21:04:34 15 files were located on Moog's servers, what, at least

21:04:37 16 136,000 of these files were. And Moog is in a position

21:04:42 17 to use that information to go look at their files in

21:04:45 18 whatever form they exist today, and I understand Ms.

21:04:48 19 Andoh's point that they may have changed, but look at

21:04:52 20 those files, and, one, determine if any of them are

21:04:55 21 trade secrets that they could actually enforce trade

21:04:58 22 secret rights in this case, and, two, which ones, and

21:05:00 23 then work with us to come up with some search terms that

21:05:05 24 could actually focus on things that are relevant to the

21:05:08 25 claims. And Ms. Andoh did mention in a prior exchange

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21:05:15 2 that where they provided search terms, I think in the
21:05:27 3 neighborhood or 30 or 32, that is very helpful. We
21:05:29 4 would like to continue that discussion. We hope it goes
21:05:32 5 father, because in the last discussion when those search
21:05:35 6 terms came up, Moog was not willing to drop any of the
21:05:39 7 others, and there are thousands of others that we've
21:05:41 8 tried to use by taking advantage of the information they
21:05:44 9 have, like the file names and the hash values for
21:05:47 10 example. But thousands and thousands of search terms
21:05:51 11 applied to a universe of 30 million documents doesn't
21:06:36 12 bring us to something that any of the lawyers in this
21:06:38 13 case could use to actually get to a relevant, manageable
21:06:43 14 amount of discovery. So that was why, your Honor, we
21:06:46 15 requested the Court just order the parties to meet and
21:06:49 16 confer and continue this process in earnest so we can
21:06:54 17 hopefully get to a way in which the discovery moves
21:06:57 18 forward and in an efficient way to get to what Moog
21:07:05 19 needs to prosecute this case, and, frankly, what the
21:07:08 20 Defendants need to defend theirs. So, that is sort of
21:07:17 21 my high level, my high level. I wanted to make sure I
21:07:20 22 answered your Honor's three questions that you started
21:07:22 23 the session with. The first being about substantial
21:07:27 24 completion versus absolute completion of discovery tasks
21:07:32 25 by certain deadlines. It won't surprise you to know, we

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21:07:36 2 agree with you. And by requiring good cause for in
21:08:20 3 order to supplement a production, for example, seems
21:08:22 4 inappropriate. We agree it could create delay and
21:08:27 5 confusion over what "good cause" means, and we think
21:08:29 6 that requiring substantial completion of these expedited
21:08:55 7 discovery tasks by the dates set out in the papers makes
21:08:59 8 sense.

21:09:00 9 MAGISTRATE JUDGE McCARTHY: Well, as I said
21:09:01 10 before, there is some uncertainty as well or potential
21:09:06 11 delay with the -- with my approach of putting the onus
21:09:12 12 on the party who's allegedly not substantially produced
21:09:19 13 that can still lead to some delay, but I think, on
21:09:23 14 balance, perhaps it's less delay than just fighting over
21:09:26 15 whether there is or is not good cause.

21:09:30 16 MS. ANDOH: Your Honor, for what it's worth
21:09:32 17 --

21:09:32 18 MAGISTRATE JUDGE McCARTHY: Yeah.

21:09:33 19 MS. ANDOH: -- we've not made a submission
21:09:35 20 since your Honor's e-mail. We actually were completely
21:09:38 21 comfortable with your Honor's definition of
21:09:41 22 substantially in the e-mail if that helps at all.

21:09:45 23 MAGISTRATE JUDGE McCARTHY: Well, that does
21:09:46 24 help, and I thank you. So, that is one thing that we
21:09:52 25 can all agree on. And I guess then the --

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21:09:59 2 MS. ANDOH: I did want to be briefly heard
21:10:01 3 on two points that --

21:10:02 4 MAGISTRATE JUDGE MCCARTHY: I'll let you be
21:10:04 5 heard, but I got to get this thought out of my head
21:10:07 6 because, otherwise, it will disappear. As I see it, the
21:10:13 7 options are, with respect to the completion of the
21:10:17 8 privilege review is either -- well, there is a couple
21:10:21 9 possibilities. One is to direct the parties to meet and
21:10:25 10 confer and try to come up with search terms. One is to
21:10:29 11 say, no, Skyryse, you can have until June 24th, but it
21:10:37 12 better be a full review and full production. And one is
21:10:42 13 to, well, I guess that is two. I had a third, that has
21:10:46 14 already disappeared. With -- with Moog reserving its
21:10:52 15 rights to claim that the March 11th order has, I think
21:10:58 16 it was March 11th, yeah, March 11th order has been
21:11:02 17 violated, and just practically speaking, you know, I'm
21:11:09 18 not an expert in this area, it does seem to me, I can
21:11:14 19 see Moog's position that this should have been under
21:11:19 20 way, but I also can see what Mr. Gross is saying, that
21:11:23 21 it has been under way.

21:11:24 22 MR. GROSS: Well, your Honor, if I may, we
21:11:27 23 actually made a proposal today that I think may be
21:11:30 24 useful on this particular issue. The privilege review
21:11:33 25 of the five devices in IDS's possession, I think, may

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21:11:36 2 help. I think we'll need your Honor to enter an order
21:11:39 3 to give us clarity. But one of the things that I think
21:11:42 4 the neutral forensic examiner might be able to help us
21:11:50 5 do is temporarily excise from those devices or at least
21:12:05 6 make unavailable the 15,000 or so documents we know need
21:12:09 7 further review so that Moog's counsel can have access to
21:12:13 8 the remainder, which your Honor has granted them to have
21:12:16 9 under the forensic protocol. And then in parallel, they
21:12:20 10 can be reviewing that document while we get through the
21:12:22 11 privilege review, and it won't hold anything up, and
21:12:25 12 those that turn out to be not privilege, we can let IDS
21:12:29 13 know would be okay to put back in the image, and the
21:12:32 14 things that are privileged, will, of course, get logged
21:12:35 15 in the ordinary course of discovery, and a privilege log
21:12:39 16 will be provided to Moog's counsel.

21:12:43 17 So, I think that may be a practical solution
21:14:12 18 in the near term as we're working through this
21:14:14 19 significant privilege review project.

21:14:17 20 MR. TRUITT: Your Honor, this is Alex Truitt
21:14:20 21 for the individual Defendants. I just have to make a
21:14:24 22 point with Moog's suggestion. We are, in some ways,
21:14:27 23 reaching a similar conclusion. We believe that we can
21:14:30 24 identify a number of devices to which we have a high
21:14:33 25 degree of certainty to which there is no possible

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2 privilege communications. For the individual
3 Defendants, the difficulty we're dealing with right now
4 is that there are probably a very small number of
5 documents to which privilege actually applies due to the
6 time frames between when the events occurred and the
7 commencement of this litigation. However, just to make
8 sure that we're able to appropriately state our position
9 with privilege and then allow, you know, Ms. Andoh's
10 client to review the remaining documents pursuant to the
11 previous orders of this Court, I think it makes sense to
12 at least ensure that the parties are able to kind of
13 move on both fronts, to kind of allow them to sort of
14 segment where the potentially privileged communications
15 or other materials exist, and so those can be given
16 further review as the remainder of documents to which,
17 you know, the parties are more convinced there is no
18 possible privilege would apply, could be released to any
19 party who wishes to review them.

20 MAGISTRATE JUDGE MCCARTHY: So, Alex, you
21 said a moment ago, or maybe I misheard you, I thought
22 you said you're aligned with Moog's position, but it
23 sounds --

24 MR. TRUITT: Did I say Moog? I meant to say
25 Mr. Gross.

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21:15:53 2 MAGISTRATE JUDGE MCCARTHY: Maybe I misheard
21:15:54 3 you. But, okay, all right, I understand.

21:15:57 4 Going back to Gabe Gross for a minute. Of
21:16:00 5 the 15,000 documents or files that may contain
21:16:04 6 privileged information, what percentage is that of the
21:16:08 7 entire universe of documents that we're talking about?

21:16:12 8 MR. GROSS: So, of the five devices from
21:16:15 9 which they came, your Honor, it's between two and three
21:16:18 10 percent of the half million files on those devices, if
21:16:21 11 I'm doing my mental math correctly. Of the 30 million
21:16:25 12 documents that Skyryse has segregated separately as part
21:16:29 13 of its investigation to find potentially discoverable
21:17:02 14 information, its, of course, a much smaller percentage,
21:17:08 15 and those will be reviewed for privilege as well.

21:17:11 16 MAGISTRATE JUDGE MCCARTHY: So you're
21:17:11 17 saying, if I understand you correctly, you're saying
21:17:13 18 that, at a maximum, you'd be withholding perhaps three
21:17:20 19 percent, maybe less, of the documents now to complete
21:17:24 20 your privilege review. Everything else would be made
21:17:27 21 available to them, what, immediately?

21:17:30 22 MR. GROSS: I think we just need to work
21:17:32 23 with the forensic vendor to see how he could implement
21:17:37 24 that. But I think you're right, your Honor, 15,000 of
21:17:43 25 about 500,000, if my math is right, should be about

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21:17:50 2 three percent. So the vast majority of what's on those
21:17:53 3 devices would be available for inspection, if, as I
21:17:57 4 assume the IDS, the neutral vendor, could help us
21:18:03 5 segregate that potential privileged minority of
21:18:06 6 documents.

21:18:07 7 MAGISTRATE JUDGE MCCARTHY: Ms. Andoh, what
21:18:09 8 about that?

21:18:11 9 MS. ANDOH: So, your Honor, we received that
21:18:13 10 proposal about an hour before the proceeding, and we
21:18:16 11 were sort of assessing it as the hearing began. Based
21:18:21 12 on what I understand from what Mr. Gross is saying, and
21:18:24 13 from the e-mail that Ms. Storey sent us, I think we can
21:18:28 14 agree to that. With respect to the privilege review, I
21:18:31 15 just want to be a little bit careful here your Honor
21:18:34 16 because there seems to be a lot of conflation of search
21:18:38 17 terms with privilege review, and they are not really the
21:18:40 18 same thing. But they are separate sorts of buckets of
21:18:45 19 issues here. But with respect to the question of us
21:18:48 20 being able to get access to the vast majority of
21:18:51 21 documents and files on the five Skyryse devices and the
21:18:56 22 23 individual Defendant devices that currently reside
21:18:59 23 with IDS, I think we are in favor of Skyryse's proposal
21:19:04 24 to segregate just the 15,000 in their case, and it
21:19:08 25 sounds like Mr. Truitt is saying it would be a much

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21:19:11 2 lower number in the case of the individual Defendants,
21:19:13 3 and give us as close as possible to immediate access to
21:19:16 4 the remainder of the information on those images. Now,
21:19:20 5 I think we would still ask that you would impose a June
21:19:25 6 24th deadline for the privilege review, because I think
21:19:30 7 15,000 documents could very reasonably be completed in
21:19:43 8 terms of review before June 24th. And we do want to
21:19:48 9 have sort of an end date where we actually have
21:19:50 10 everything other than privilege material from the five
21:19:53 11 images, but I think that that is a workable proposal
21:19:55 12 with respect to the materials that currently reside with
21:19:58 13 IDS in terms of giving us access to those images.

21:20:04 14 MAGISTRATE JUDGE MCCARTHY: All right. Then
21:20:06 15 I think that is great progress, and I've got a district
21:20:11 16 judge calling me, but I'm just going to ignore him.

21:20:15 17 MS. ANDOH: And, your Honor, I just wanted
21:20:16 18 to respond really briefly to one comment that Mr. Gross
21:20:21 19 made about this 136,000 files, and this idea we should
21:20:24 20 be able to go back and use these file paths to go
21:20:27 21 identify them and look at them. This sort of highlights
21:20:31 22 a particular issue that Moog has, which is, at some
21:20:40 23 point, right, Ms. Kim actually took 136,000 files,
21:20:49 24 right, she took them with her. Our understanding, based
21:20:57 25 on the information that we've been giving, is that those

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21:21:00 2 136,000 files existed on at least one device and they
21:21:06 3 were accessed. We have still not been able to, with 100
21:21:12 4 percent confirmation, we don't know for certain whether
21:21:15 5 a full copy of those 136,000 or 137,000 files have been
21:21:20 6 turned over to IDS as part of either the 23 devices that
21:21:24 7 the individual Defendants turned over or the five
21:21:27 8 devices that Skyryse turned over. But I think my
21:21:30 9 initial reaction to Mr. Gross's point is why would we go
21:21:33 10 through the trouble of trying to imperfectly approximate
21:21:37 11 what was downloaded when we can just go to IDS and look
21:21:45 12 at the 136,000 files that Ms. Kim downloaded. Once we
21:21:52 13 have access to those, we have absolutely no problem with
21:21:55 14 going through them and identifying which files we think
21:21:58 15 are confidential trade secret information. But we can't
21:22:02 16 even get a straight answer from the Defendants as to
21:22:05 17 whether a complete set of what she downloaded is with
21:22:08 18 IDS or not. We're working under the assumption that she
21:22:11 19 didn't actually delete every instance of those files and
21:22:15 20 that, in fact, there is at least one device that has
21:22:18 21 been turned over to IDS that has that full complement of
21:22:24 22 137,000 files. You know that is something that,
21:22:30 23 presuming that they exist, we should just have access to
21:22:34 24 them. They are our files anyway. We can go through
21:22:37 25 them and identify which ones -- and, your Honor, this is

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21:22:42 2 just to sort of particularly the problem we feel is a
21:22:47 3 Catch 22. We keep being told we need to identify our
21:22:52 4 trade secrets with more specificity, but, the only
21:22:59 5 possible location in which our file still exist is with
21:23:04 6 the neutral vendor because Defendants turned them over.

21:34:12 7 MR. GROSS: So, your Honor, if I may just
21:34:14 8 offer a couple of points in response to this. You know,
21:34:17 9 this case, like every case, has its own factual
21:34:29 10 idiosyncrasies, but it's also very much like most trade
21:34:35 11 secret cases in that the Plaintiff has a sense for what
21:34:38 12 was taken, maybe not with one 100 percent precision, has
21:34:44 13 in its own files information about what it believes was
21:34:49 14 taken, and is in a position to identify with some
21:34:54 15 particularity what its alleged trade secrets are. I
21:35:00 16 mean, rest assured, nobody will be trying a case to a
21:35:04 17 jury with 1.2 million trade secrets and/or 136,000 trade
21:35:18 18 secrets, that obviously can't happen.

21:35:24 19 MAGISTRATE JUDGE MCCARTHY: I'd like to sit
21:35:25 20 in on the voir dire for that trial.

21:35:27 21 MR. GROSS: I'm sure. I'm sure. And, you
21:35:30 22 know, your Honor, it's often a common posture we see in
21:35:34 23 these trade secret actions that a Plaintiff doesn't
21:35:39 24 naturally want to show what the trade secrets are until
21:35:44 25 it's ordered to do so or required by some legal process

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2 to do so. So, while I understand Ms. Andoh, as
3 discovery proceeds, may need to update and/or amend the
4 trade secret information, I take issue with the notion
5 that Moog, with all of its alleged technologies and
6 secrets and file names and paths and computer servers at
7 its disposal, as it has been for many months, can't tell
8 us more in terms of what the substance of its alleged
9 trade secrets are which, of course, would streamline the
10 discovery process and let us focus on what matters.

11 MAGISTRATE JUDGE MCCARTHY: Well, if they
12 know, I think it's undisputed that she took files,
13 whether the files that she took are trade secrets or not
14 is a separate question, but, what is the problem with
15 her proposal that you just -- because its got Moog
16 information in it, it may have Skyryse information as
17 well, but that is the type of information that you give
18 to IDS. So what is the problem, aside from a privilege
19 issue, of just allowing Moog then to look at what's with
20 IDS, and then tell you, okay, we don't care about X, Y
21 and Z, but A, B and C are of concern to us?

22 MR. GROSS: I understand the question, I
23 think, your Honor, and it's a fair one, but the problem,
24 I think, is that waiting for them to have gone through
25 everything in IDS's possession, which you have granted

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2 them the right to do, while, at the same time, demanding
3 that Skyryse turn over all discovery out of its 30
4 million files and 7 terabytes of data without having
5 some guidance from the Plaintiff who knows what its
6 actual trade secrets are, creates a real
7 disproportionate burden and a cart/horse problem. Even
8 before Moog reviews the information in IDS's possession,
9 it knows what it knows about its trade secrets and it
10 could be providing an identification with specificity
11 about what those trade secrets are. Maybe it would need
12 to amend that after it looks through everything that is
13 in IDS's possession, and we can handle those amendments
14 and supplements as necessary. That is the way discovery
15 works. But for it to sit here and say as it has -- we
16 don't know what the trade secrets are, but you go turn
17 over all your discovery to us, really creates this
18 cart/horse problem and a disproportionate burden.

19 MS. ANDOH: Your Honor, we absolutely have
20 not said that. I mean, our complaint, and the
21 attachment to our complaint and our preliminary
22 injunction papers provide substantial guidance and we
23 provided additional substantial guidance. Again, the
24 cart/horse problem here, I think, from our perspective,
25 is Defendant's position, which is that somehow or

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21:44:27 2 another we should be in a position to give them a full
21:44:30 3 identification of trade secrets when their employees
21:44:33 4 intentionally deleted the files that they took and
21:44:36 5 covered up their tracks after they were taken. And, you
21:44:39 6 know, your Honor, I mean, with respect to the volume of
21:44:42 7 material, you know, it's not that I'm not without
21:44:45 8 sympathy. I don't think any lawyer relishes having to
21:44:51 9 go through millions of files, but, again, it's also not
21:44:57 10 our fault that their employees took one point -- almost
21:45:01 11 4 million files that we're aware of sitting here today
21:45:04 12 with them. The volume problem was created by
21:45:07 13 Defendant's conduct. The problem here is not created by
21:45:11 14 Moog's inability to sufficiently identify its trade
21:45:15 15 secrets. It's the conduct of Defendants that is causing
21:45:17 16 the volume problem.

21:45:18 17 And I just want to go back again and point
21:45:20 18 out that when we filed this case, Defendants claim that
21:45:24 19 they could identify non-public Moog information and turn
21:45:28 20 all of it over within three weeks of the date of the
21:45:31 21 stipulated order. March 11th was the date of the order
21:45:34 22 and April 1 was the turnover date. They certified to us
21:45:41 23 on April 1st that they had, in fact, identified all
21:45:48 24 non-public information and turned it over to IDS, and
21:45:50 25 now, two months later, we're still not hearing, after

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21:45:54 2 finding out or, what is it, less than a month later,

21:45:58 3 that they were wrong about that. We've had additional

21:46:02 4 turnovers to IDS, we're still waiting to hear that they

21:46:11 5 are actually done identifying non-public information.

21:46:17 6 And, I think, you know, to some degree, the problem here

21:46:23 7 is that we're basically being told, well, now, well, we

21:46:28 8 can't comply with the March 11th order because you have

21:46:32 9 to tell us exactly what we took and used, which,

21:46:35 10 obviously, we can't, absent discovery.

21:46:38 11 Frankly, your Honor, to some degree, I think

21:46:40 12 that what probably makes the most sense at this point,

21:46:44 13 because it feels like this issue just sort of keeps

21:46:48 14 coming up again and again and again, I think as a

21:46:51 15 starting point, let's get us access to the images in IDS

21:46:56 16 so we can start looking at this stuff and we can start

21:46:59 17 getting a more detailed level of description around the

21:47:02 18 files that were taken and the files we assert are trade

21:47:05 19 secret of those files and we get a chance to look at the

21:47:08 20 actual evidence that has been turned over. And no one

21:47:12 21 is saying that we're going to wait until October 16th to

21:47:16 22 give them an identification of trade secrets. But I

21:47:19 23 also think that this is, to some degree, of a little bit

21:47:23 24 of a side show with respect to the discovery deadlines.

21:47:27 25 Because the question of their compliance with the March

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21:47:29 2 11th order is a separate order and a separate set of
21:47:33 3 issues than whether the document demands that the sides
21:47:36 4 have issued to each other and interrogatories and RFAs
21:47:39 5 and depositions take place before the August 25th
21:47:43 6 deadline that everybody has agreed should be in place
21:47:46 7 and the October 17 hearing date that everybody has
21:47:48 8 agreed should be in place. I think we just need to work
21:47:51 9 backwards from those dates that everybody has agreed to.
21:47:55 10 Impose dates and then, and then, to the extent we want
21:47:58 11 to have a continuing fight over this March 11th order,
21:48:02 12 we can raise it separately to your Honor as either a
21:48:05 13 motion to compel, whatever structure makes the most
21:48:11 14 sense, but I think, to some degree, it's
21:48:16 15 overcomplicating things, but I think the real starting
21:48:19 16 point here is getting some actual deadlines for the
21:48:22 17 materials that are already with the neutral vendor. And
21:48:27 18 then, to the extent that we can't get actual resolution
21:48:31 19 on the disclosures that we've been promised since April
21:48:36 20 26th and haven't received yet, with respect to the
21:48:41 21 spoliation and use issues, we will be back to your Honor
21:48:46 22 with that and we will -- we will proceed accordingly.
21:48:51 23 MAGISTRATE JUDGE McCARTHY: All right. Let
21:48:52 24 me go back for a minute to the area that it seems like
21:48:56 25 the parties have reached agreement on, which is that

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21:49:00 2 Skyryse will hold back for now roughly 15,000 files to
21:49:08 3 complete their privilege review. The individual
21:49:11 4 Defendants will hold back a lesser number to complete
21:49:15 5 their privilege review. Everything else will be,
21:49:18 6 provided that IDS has the capability of doing so, the
21:49:24 7 remainder of the documents in IDS's possession currently
21:49:30 8 will be made available to Moog. Is that something that
21:49:34 9 everybody agrees on?

21:49:36 10 MR. GROSS: I think we have agreement on
21:49:37 11 that, your Honor.

21:49:38 12 MS. ANDOH: We do, your Honor.

21:49:39 13 MR. GROSS: And I do appreciate the
21:49:40 14 qualification that you just mentioned, that it is
21:49:43 15 pending IDS's technical capability to segregate the
21:49:48 16 information, which I don't expect will be a problem, but
21:49:52 17 we have to confirm that.

21:49:53 18 MS. ANDOH: And, your Honor, we're willing
21:49:55 19 to agree that IDS can provide us with the information on
21:50:00 20 a rolling basis since there are multiple devices
21:50:03 21 involved, so, I think --

21:50:05 22 MAGISTRATE JUDGE MCCARTHY: All right.

21:50:06 23 MR. TRUITT: And just to touch in on
21:50:08 24 practicalities of this, we feel, at least at the bare
21:50:12 25 minimum --

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21:50:12 2 MAGISTRATE JUDGE MCCARTHY: I'm sorry.

21:50:14 3 MR. TRUITT: This is Alex Truitt for the
21:50:16 4 individual Defendants.

21:50:16 5 MAGISTRATE JUDGE MCCARTHY: Okay.

21:50:17 6 MR. TRUITT: We have the lion's share of the
21:50:20 7 devices that have been submitted to IDAS, and, at the
21:50:24 8 bare minimum, we should at least be able to identify,
21:50:27 9 with a good degree of specificity, the devices which we
21:50:30 10 believe there is absolutely no privilege information
21:50:34 11 which should be able to get a lot of this review
21:50:37 12 underway.

21:50:37 13 MAGISTRATE JUDGE MCCARTHY: Okay. That is
21:50:38 14 good. And then now I've already -- we've already
21:50:42 15 discussed the fact that the scheduling order will
21:50:47 16 incorporate my definition of substantial -- "substantial
21:50:52 17 production," rather than hard deadlines.

21:50:59 18 Is there -- can we put the rest of the
21:51:02 19 issues on hold for now until we reconvene? I know we
21:51:08 20 have a monthly meeting coming up, what, the 16th? I can
21:51:12 21 meet with you earlier than that, too. But let me just,
21:51:15 22 let me throw something out there for all of you, and
21:51:20 23 this is not by way of threat at all, it's just that I'm
21:51:25 24 trying to wrestle with your expectations and my
21:51:32 25 obligations, for example, I think I mentioned to you

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21:51:36 2 that every third month, I come on criminal duty, meaning
21:51:41 3 any new criminal case that comes in, comes to me. I
21:51:45 4 have to review search warrant applications and I have to
21:51:48 5 review complaints, et cetera, and conduct arraignments,
21:51:51 6 things of that sort. Shortly before we commenced today,
21:51:56 7 I got an e-mail from an Assistant U.S. Attorney saying
21:52:00 8 he is going to be sending over a complaint, and I just
21:52:03 9 said, well, hold your horses, because I'm not going to
21:52:05 10 interrupt this conference, so I'll talk to you later.
21:52:09 11 But, I just point that out because I want you to know, I
21:52:13 12 will do my best in working with you all, but there are
21:52:16 13 some limits on both my technical knowledge, that is
21:52:21 14 probably the greatest limit, and also my time
21:52:26 15 availability. And I'm wondering whether we should be
21:52:29 16 considering appointing a special master to deal with
21:52:32 17 some of these things. I just throw that out for your
21:52:35 18 consideration. And if you say no, then fine, I'll do my
21:52:38 19 best, but we're going to be getting in areas that have,
21:52:43 20 you know, that far exhaust my technical understanding
21:52:47 21 and capabilities. And, perhaps, if we had a somebody
21:52:51 22 with a greater technical background than a political
21:52:57 23 science major, which I was, it would be helpful to
21:53:01 24 everybody. I throw that out for you to think about.
21:53:03 25 You don't have to answer today. But, I would be

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21:53:08 2 interested in at least your preliminary reactions to
21:53:13 3 that.

21:53:14 4 MR. GROSS: Sure. This is Mr. Gross for
21:53:16 5 Skyryse. Preliminarily, it's intriguing and certainly
21:53:23 6 something we would be happy to talk to our client about.
21:53:28 7 And we'll be happy to meet and confer with the other
21:53:31 8 party's counsel on it. I think it's something that
21:53:33 9 could be useful in a case like this.

21:53:37 10 MS. ANDOH: Yes, your Honor.

21:53:38 11 MAGISTRATE JUDGE MCCARTHY: Bearing in mind
21:53:39 12 there is an expense. I work for free for you the
21:53:42 13 taxpayer, but if we get into a special master, there
21:53:48 14 could be expense involved, but, the benefits might make
21:53:53 15 up for any expense.

21:53:55 16 MS. ANDOH: Your Honor, I think, I think,
21:53:57 17 we're also interested in discussing it with our client.
21:54:00 18 I think there are a lot of things about that proposal
21:54:03 19 that makes sense. I think the one concern we have, if
21:54:06 20 it becomes a second gate keeper to your Honor, if we
21:54:09 21 really need to have a decision made and it actually
21:54:12 22 creates more delay in the end because of the additional
21:54:15 23 process of sort of having to go through that additional
21:54:17 24 filter. But having said that, I think, you know,
21:54:20 25 obviously, this case is a case that has a lot of

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21:54:23 2 different moving pieces, and it could be really helpful
21:54:26 3 to have additional assistance. So, we're happy to go
21:54:30 4 ahead and discuss that with the client and get --

21:54:33 5 MAGISTRATE JUDGE MCCARTHY: Just consider
21:54:33 6 it, because, obviously, I don't have anybody in mind.
21:54:37 7 You all might be able to agree on somebody. But if we
21:54:42 8 go down that road, that person, I presume, could devote
21:54:48 9 as much time as needed to the intricacies to this case,
21:54:53 10 whereas my availability is going to be a little less.
21:54:55 11 And, perhaps, even more importantly, my understanding of
21:54:59 12 some of the issues. I'm doing my best. But, so, yeah,
21:55:03 13 just think about that. We don't need to decide that
21:55:06 14 today, obviously. And I know there are a lot of things
21:55:10 15 that you just need a decision on, I understand that and
21:55:14 16 that is why, you know, but it's very important to me and
21:55:19 17 to you that, as much as possible, my decision be the
21:55:23 18 correct one.

21:55:24 19 So, in any event, back to my, my proposal or
21:55:30 20 inquiry of a couple minutes ago. Can we go with what
21:55:37 21 we've agreed on now and reconvene at a date that you
21:55:40 22 want to talk about the remainder? So, a couple of
21:55:45 23 global things, my understanding, first of all, Moog is
21:55:48 24 reserving its rights to argue that the March 11th order
21:55:53 25 has been violated; and Skyryse reserves its right to

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21:55:57 2 argue that it has not. The privilege review would
21:56:05 3 continue, but not to be -- it's not to be completed by
21:56:11 4 June 2nd, it would be completed by June 24th, provided
21:56:15 5 that the files, other than those 15,000 for Skyryse or
21:56:24 6 fewer than that for the individual Defendants, would be
21:56:26 7 made available to Moog as soon as IDS is able to do so.
21:56:32 8 Is that -- does that kind of summarize where we've been
21:56:35 9 at today?

21:56:36 10 MS. ANDOH: That is my understanding with
21:56:38 11 one addition, which is that we still need a document
21:56:41 12 production deadline, which is separate from this
21:56:45 13 privilege review and image deadline. In other words,
21:56:47 14 the parties have also engaged in what I'm going to call
21:56:54 15 standard RFP practice, and there needs to be a deadline
21:57:01 16 set for the parties to exchange documents.

21:57:04 17 MAGISTRATE JUDGE McCARTHY: Okay. And I
21:57:05 18 apologize. What deadlines have the parties respectfully
21:57:09 19 suggested?

21:57:09 20 MS. ANDOH: So Moog suggested tomorrow, June
21:57:13 21 2nd, understanding that, given the timing of this
21:57:16 22 hearing, that that may not be practicable, but the idea
21:57:20 23 here is not to have any further delay. The original
21:57:23 24 document turnover deadline that was stipulated in the
21:57:25 25 original discovery order in this case was, I believe,

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21:57:28 2 April 26th.

21:57:30 3 MAGISTRATE JUDGE MCCARTHY: All right. Mr.

21:57:31 4 Gross?

21:57:33 5 MR. GROSS: Your Honor, I think we are
21:57:35 6 prepared to make a substantial production tomorrow, June
21:57:38 7 2nd, and this was in part --

21:57:40 8 MAGISTRATE JUDGE MCCARTHY: I knew I
21:57:41 9 shouldn't have said that.

21:57:42 10 MR. GROSS: No, no, I think it's good news
21:57:44 11 for everyone. We're prepared to do it and it was, in
21:57:50 12 part, dependent on your Honor's tentative ruling that
21:59:15 13 the production be substantially complete, understanding
21:59:18 14 that discovery is going to be continue beyond June 2nd.

21:59:22 15 MAGISTRATE JUDGE MCCARTHY: All right. Then
21:59:23 16 let's go with that. And if Moog is pleased with what it
21:59:26 17 gets, that is great. And if not, then we'll have the
21:59:29 18 issue of whether, in fact, the production was
21:59:33 19 substantial.

21:59:34 20 MS. ANDOH: Well, your Honor, hopefully
21:59:37 21 we'll be able to (inaudible) you, but we're not sure.

21:59:43 22 MAGISTRATE JUDGE MCCARTHY: All right. What
21:59:45 23 I would suggest as in with all of these conferences,
21:59:50 24 it's recorded, I would suggest that somebody ask for a
21:59:53 25 transcript just so we have a record of what was said in

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21:59:56 2 all of our conferences down the road. I would also
22:00:00 3 suggest that the parties try to submit to me a
22:00:05 4 stipulation encompassing what we have agreed on today
22:00:08 5 and we'll take it from there.

22:00:11 6 MR. GROSS: Thank you, your Honor. And I
22:00:12 7 will just note, I don't think there is any argument on
22:00:15 8 this, but I will note for the record that these
22:00:17 9 substantial completion deadlines that I think we're in
22:00:20 10 general agreement on, they apply to both parties and
22:00:22 11 Moog has committed to producing documents to us as well.
22:00:26 12 These are not unilateral, it is expected completion from
22:00:30 13 both sides.

22:00:31 14 MAGISTRATE JUDGE MCCARTHY: Absolutely,
22:00:32 15 absolutely.

22:00:33 16 Now, we are next scheduled to get together
22:00:36 17 on June 16th at 4 p.m., but if the parties want to meet
22:00:44 18 with me in advance of that date, just let me know and
22:00:49 19 we'll set something up, okay?

22:00:52 20 MS. ANDOH: Thank you, your Honor. I think
22:00:53 21 that -- I think what we may choose to do, just speaking
22:00:57 22 for Plaintiff, to the extent that we've gotten anything
22:01:01 23 that we believe everybody is in at an impasse on, we
22:01:06 24 might take your Honor up on filing a motion ahead of the
22:01:10 25 hearing so that way when we reconvene, your Honor has

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22:01:15 2 the party's position in writing.

22:01:17 3 MAGISTRATE JUDGE MCCARTHY: That's fine,
22:01:18 4 that's fine. As I said before, I prefer the informal
22:01:23 5 approach with correspondence in advance of the
22:01:26 6 conference, and I understand that is sometimes counter
22:01:29 7 productive. But I would, short of a motion, which you
22:01:33 8 can file, if you want, but I also, we discussed
22:01:36 9 previously that in advance of the -- of any of our
22:01:41 10 monthly conferences, you send me a letter just updating
22:01:44 11 me on where things stand and what is -- what are the
22:01:49 12 topics for discussion at that particular conference so I
22:01:53 13 can kind of hit the ground running, okay?

22:01:58 14 MR. GROSS: Understood, your Honor. We'll
22:01:59 15 be in touch with you. And I just want to note, while I
22:02:01 16 hope we will resolve a lot of our disputes through
22:02:06 17 meeting and conferring in good faith, there may be some
22:02:45 18 we come back to you on, and I would just ask that if
22:02:49 19 they require full briefing, we don't let the monthly
22:02:55 20 status conferences turn into pre-hearing, hearing, that
22:03:04 21 each side has had the opportunity to be heard through
22:03:07 22 briefing.

22:03:07 23 MAGISTRATE JUDGE MCCARTHY: I agree. If I
22:03:08 24 find, and this would not be anybody's fault, but if I
22:03:11 25 conclude that these informal conferences are not really

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22:03:15 2 serving a purpose, then we'll go in a different
22:03:18 3 direction. But I did in, I think I mentioned, you know,
22:03:23 4 I had five patent cases involving the same patents and
22:03:29 5 the same Plaintiffs and different Defendants, and we,
22:03:31 6 just to keep from getting inundated, we went to the
22:03:37 7 monthly meeting protocol and had a good deal of success
22:03:43 8 in forestalling a ton of motions, not complete success,
22:03:48 9 but some success. And I'm happy to say, those cases are
22:03:52 10 all now settled. So, in any event, happy June everybody
22:03:58 11 and we will be in touch.

22:04:01 12 MR. GROSS: Thank you, your Honor.

22:04:02 13 MR. TRUITT: Thank you, your Honor.

22:04:03 14 MS. ANDOH: Thank you, your Honor.

22:04:03 15 MAGISTRATE JUDGE McCARTHY: Okay. Take
22:04:04 16 care.

17 * * *

18 CERTIFICATE OF REPORTER

19
20 I certify that the foregoing is a correct transcript
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